OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: DEBORAH A. BUTLER, ASSISTANT CHIEF COUNSEL (FIELD SERVICE)
CC:DOM:FS

SUBJECT:

Field Service
Advice
Requirement and Manner of Election to Reduce Basis

This Field Service Advice responds to your undated memorandum, received here on March 1, 1999. It is not binding on Examination or Appeals and is not a final case determination. This document may not be cited as precedent.

LEGEND:

Taxpayer	=	.
A	=	
B	=	
C	=	
Year 1	=	
Year 2	=	

ISSUE:

Whether Taxpayer may reduce its basis in other property under I.R.C. § 1071 and Treas. Reg. § 1.1071-2(a)(3) in the absence of a prior election to do so.

CONCLUSION:

Taxpayer may not reduce its basis in other property.

FACTS:

Taxpayer was the parent corporation of a group including A, B, and C. During Year 1 and Year 2, each of A, B and C sold certain assets. By invoking the right under section 1071 to treat the sales as involuntary conversions under section 1033(a), all three elected to defer the gain realized on the conversion by replacing the property sold with qualified replacement property within the prescribed two-year time period. This election was made on a statement attached to the tax returns for the years of the sales. Each of the three possessed the written certificate from the Federal Communications Commission (FCC) at the time of filing their return. None of the three opted to reduce their basis in other assets in any of their respective elections;

LAW AND ANALYSIS:

Now-repealed section 1071 provided that a taxpayer could treat the sale of certain broadcasting assets as an involuntary conversion if that sale were certified by the FCC to be necessary or appropriate to effectuate a change in policy of the FCC.[1]

[1] Section 1071, first enacted in substance in the Revenue Act of 1943 (Pub. Law 78-235, § 123), was originally intended as a wartime tax-relief provision for those market-limiting station sales that were ordered by the FCC, since acquisition of any new radio property during that time would have been difficult. See S. Rep. No. 78-627, at 23 (1943). Section 1071 was repealed by Pub. Law 104-97, § 2, 109 Stat. 93 (1995), generally, for sales and exchanges made on or after January 17, 1995. According to the House of Representatives' report, the section was repealed because of "serious tax policy problems." H.R. Rep. No. 104-32, at 16. Those problems included the FCC's progressive loosening of the standards for issuing tax certificates so as to go "far beyond" what Congress had originally contemplated as well as an FCC program that was "so vague as to be subject to significant abuse." Id. Additionally, there was inadequate oversight by the IRS, or any other government body, with respect to the tax cost; thus, there was inordinate discretion conveyed to the FCC, resulting in "an open-ended entitlement program with

A taxpayer entitled to the benefits of the section was allowed to elect one of the three options in Treas. Reg. § 1.1071-2(a)(3):

> (i) To treat such sale or exchange as an involuntary conversion under the provisions of section 1033; or,
>
> (ii) To treat such sale or exchange as an involuntary conversion under the provisions of section 1033, and in addition elect to reduce the basis of property . . . by all or part of the gain that would otherwise be recognized under section 1033; or
>
> (iii) To reduce the basis of property . . . by all or part of the gain realized upon the sale or exchange.

All three entities had elected the first option above with their returns; thus, in short, they had two years within which to acquire replacement property. In this case, Rev. Rul. 88-39, 1988-1 C.B. 299, sets out the controlling Service position. Specifically, a taxpayer who elected the provisions of section 1033 pursuant to section 1071(a) on a timely filed return and subsequently was unable to acquire qualified replacement property within the time prescribed by section 1033(a) may not later elect to reduce the basis of other depreciable property pursuant to Treas. Reg. § 1.1071-2(a). See also Rev. Rul. 79-277, 1979-2 C.B. 300 (election may not be made on an amended return).[2]

CASE DEVELOPMENT, HAZARDS, AND OTHER CONSIDERATIONS:

[redacted]

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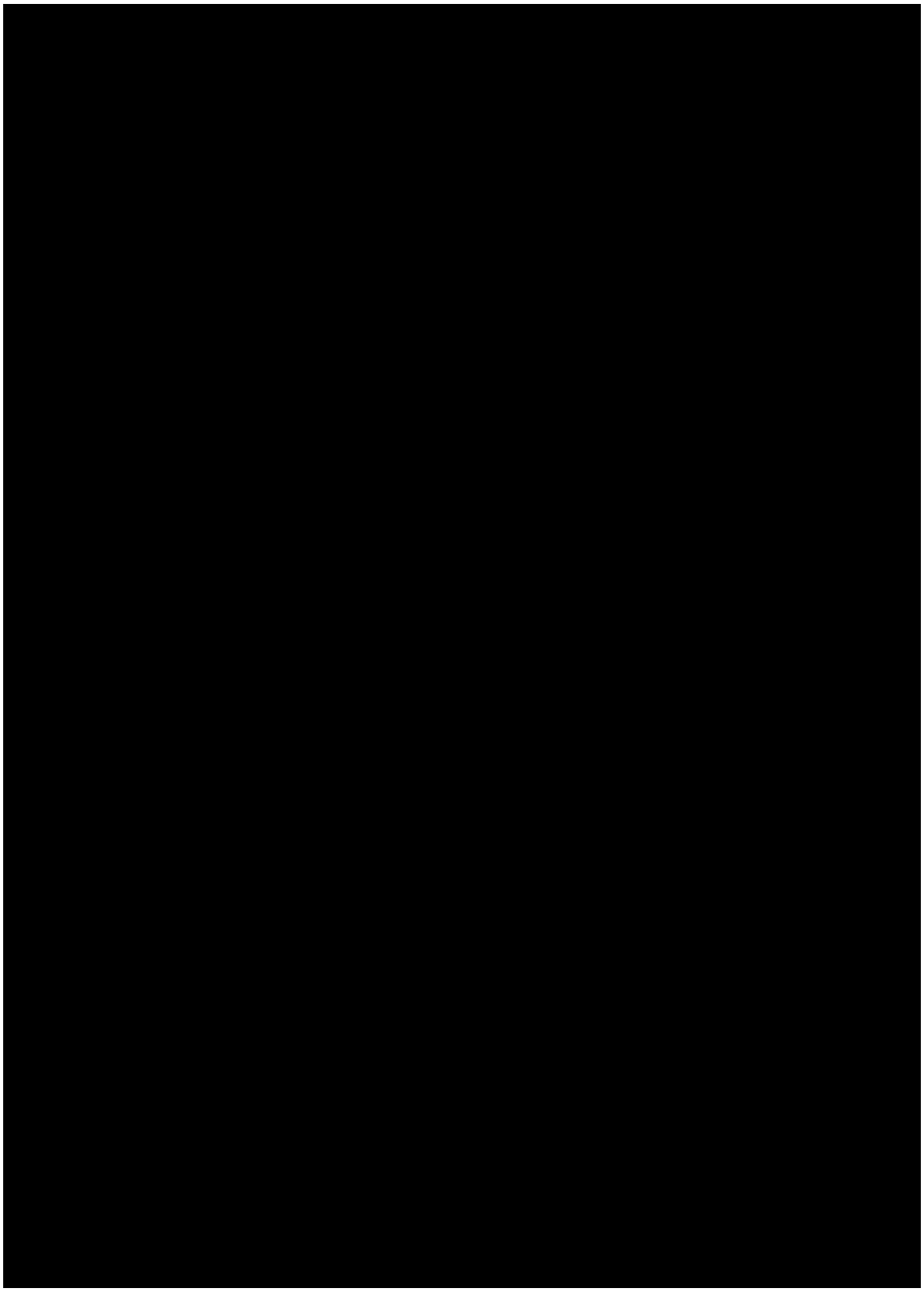
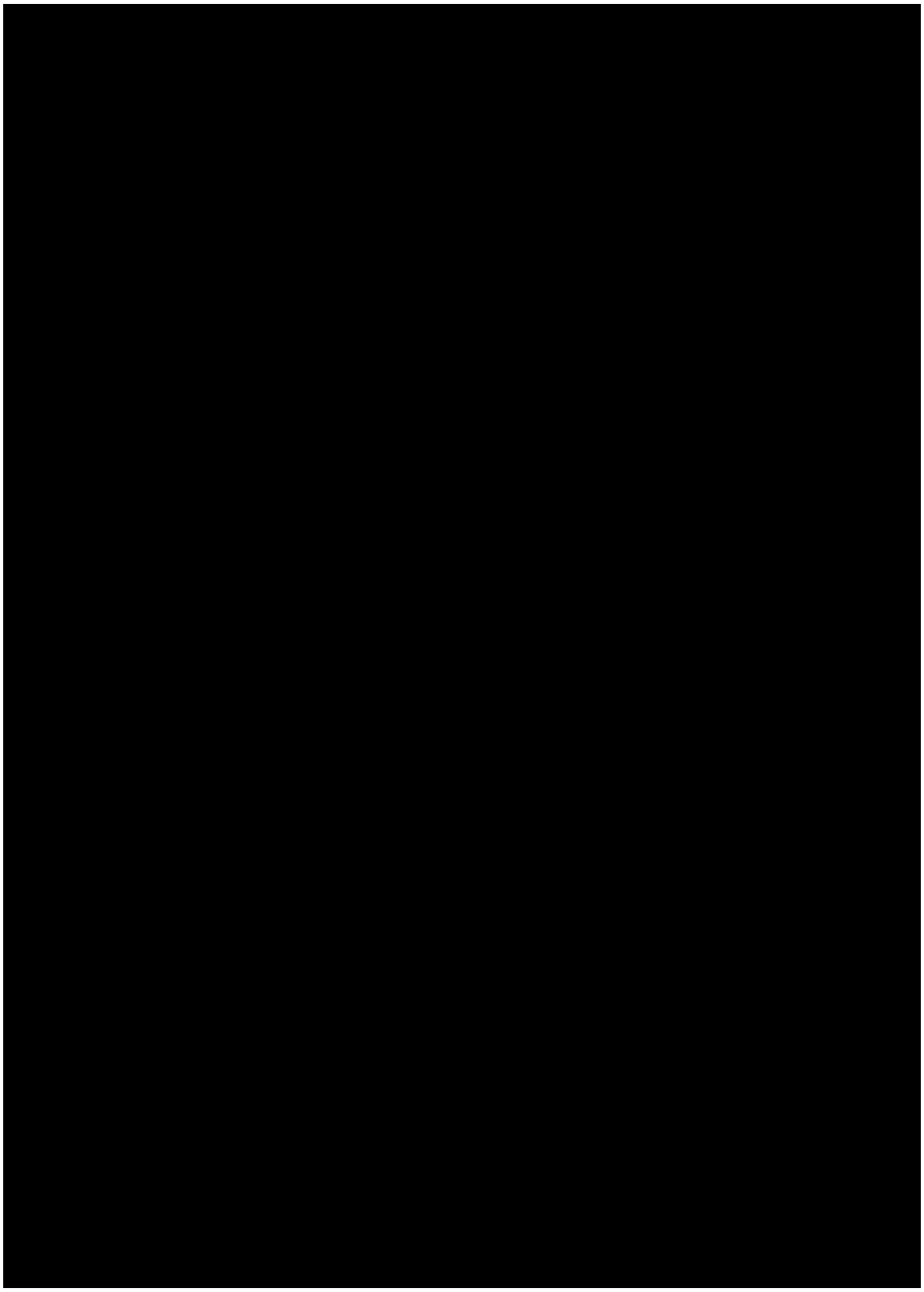
no constraints" limiting the utilization of the provision. Id. at 16-17

[2] Compare Park Broadcasting v. Commissioner, 78 T.C. 1093 (1982), where an election made on an amended return was held valid because the taxpayer had not received FCC certification (and had not expected it because of FCC policy at the time) until well over four years after the year-of-sale return had been filed. Only later, after a change in FCC policy, the taxpayer took the opportunity to seek FCC certification and to make the deferral election.





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